

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0252P

Withholding Tax

For the Period January 1999 through December 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer is a general surgeon and was assessed a penalty for filing its withholding tax returns late. In a fax dated May 14, 2002, taxpayer states that it started business in 1997 and hired an experienced office manager and a CPA firm to manage the business aspects. The office manager lacked a number of business-related skills and the CPA firm failed to assign a new accountant to the surgeon's business.

Taxpayer states it caught its own error and filed the returns. In reviewing the taxpayer's account, however, the department finds that BIA billings were issued on September 6, 2000 and the missing returns were not filed until March 17, 2001. Taxpayer requests a penalty waiver.

I. Tax Administration – Penalty

DISCUSSION

At hearing, taxpayer's representative states that the IRS waived the penalty and the taxpayer found the outstanding liabilities, not the Department. Records, however, indicate that the Department billed BIA for 1999 on September 6, 2000 and the missing returns were not filed until March 17, 2001. The late payment and filing incurred a penalty at ten percent (10%) of the tax due. Taxpayer states that it advised the department that it owed payroll taxes for the year 1999 and submitted \$22,431.34 with its letter dated March 2, 2001. Taxpayer further states that the IRS waived all late payment and late filing penalties for reasonable cause. Taxpayer requests

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a penalty waiver because it relied upon its office manager and CPA to correctly prepare and remit taxes due.

Taxpayer's failure to file the return and remit the tax timely was not the result of reasonable cause. Taxpayer is responsible for the actions of its employees and persons he hires to assume responsibilities.

FINDING

Taxpayer's protest is denied.

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